

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.857/M/2024
Assessment Year: 2016-17**

M/s. Krishival Foods Ltd. (formerly known as M/s. Empyrean Cashews Pvt. Ltd.) 1309, Lodha Supermus Powai, Saki Vihar Road, Opp. MTNL Office, Mumbai- 400072. PAN: AADCE6583A	Vs.	The Assistant Commissioner of Income Tax- Circle 9(2)(2) Aayakar Bhavan, Maharashi Karave Road, Mumbai- 400020.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Abhishek Khandelwal, A.R.

Revenue by : Shri P. D. Chougule (Addl. CIT) SR. D.R.

Date of Hearing : 07 . 08 . 2024

Date of Pronouncement : 28 . 08 . 2024

O R D E R

Per :Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059048921(1)

Dated 26/12/2023 for the Assessment Year 2016-17.

2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case and present law, the Ld. CIT(A) has erred in not allowing the deduction claimed u/s. 80JJA of the Act amounting to Rs.66,43,462/-.*
2. *The appellant craves leave to add, amend, alter or delete the said ground(s) of the appeal.”*

3. The facts of the case, in brief, are that the assessee is engaged in the business of processing of cashew, trading of jaggery and production of organic manure. In the computation of income submitted during the assessment proceedings, the Ld. AO noticed that the assessee has claimed deduction u/s. 80JJA of the Act amounting to Rs.66,43,462/-. The AO then asked the assessee to provide the details in support of its claim for manufacturing of organic manure for which deduction u/s. 80JJA was claimed. In response to that, the assessee provided the party wise details of sales of organic manure made to different parties. However, it was found by the AO that the assessee only provided the self-generated ledgers of purchase of raw materials and no invoices were provided for all raw materials except cashews shells. According to the assessee, the raw materials required for production of organic manure are gobber (cow dung), cashews shells, fly ash and silicon ash. It was stated by the assessee

that the cashew shells were generated out of manufacturing/processing of cashews and utilized as a major raw material for production of organic manure. The assessee, further, submitted that the total sales of all organic manure was made at Rs.2,87,59,310/- and after allocating labour charges and cost of raw materials, the profit from the business of organic manure was at Rs.2,19,56,410/-. The assessee submitted that since the cost of cashew shells used for the production of organic manure could not be ascertained, the assessee has claimed ad-hoc deduction of 23.10% of sales amounting to Rs.66,43,462/-.

4. The Ld. AO, however, observed that the assessee has not assigned any cost to the raw material i.e. the shells of cashews, which is a bye product of its processing business of cashew. Non allocation of value for the shells of the cashews has resulted in double benefit for the assessee. To verify the genuineness of sales of organic manure, The AO issued notice u/s. 133(6) of the Act to all 24 parties to whom the assessee has claimed to have sold the organic manure on the addresses provided by the assessee. However, in response to those notices, 14 notices were returned 'unserved' and 'no response' was received from other 10 parties. The Ld. AO, therefore, asked the assessee to show cause as to why the claim of deduction made u/s. 80JJA of the Act should not be disallowed. The

assessee was also asked to show cause as to why the ad-hoc deduction claimed u/s. 80JJA of the Act should not be disallowed.

5. In response to the show cause, the assessee submitted a detailed reply justifying its claim of deduction made u/s. 80JJA of the Income Tax Act. the Ld. AO did consider the reply of the assessee but was not convinced with the explanation that the shells of the cashews generated out of business of processing of cashews is a waste product and has got nil or negligible value. The AO held that cashews is not a waste product but a bye product and its value has to be considered both while calculating profit out of manufacturing of cashew business and cost to be deducted while calculating profit of organic manure business. Regarding no response from the parties to whom notice u/s 133 (6) of the Act, the assessee claimed that organic manure were sold to farmers and they might not have understood the significance of the notice issued u/s. 133(6) of the Income Tax Act. However, the assessee couldn't give satisfactory reply about those parties who were not the farmers. The Ld. AO, therefore, disallowed the claim of deduction made u/s. 80JJA of the Income Tax Act by holding that it is clear from the facts of the case that these parties were not farmers as claimed by the assessee and also that the sale of organic manure is not substantiated by any documentary evidence.

6. Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the Ld. CIT(A) who, vide the impugned order dismissed the appeal of the assessee and confirmed the additions made by the Ld. AO on the ground that the appellant neither produced any documentary evidence regarding manufacturing/processing, knowhow, manpower involved in supervising the process, carriage inward of raw materials, storage of raw materials and finished products, requisite permissions/licenses obtained from the government, nor could it establish the genuineness of the 24 persons to whom organic manure was claimed to have been sold. Regarding the photographs submitted by the appellant the same was found to be of some pits which showed wild growth of vegetation. No photographs of factory, plant & machinery were produced to prove their existence. It was also not established that why the assessee has determined profit on ad-hoc basis. The assessee also couldn't produce any documentary evidence against purchase of raw material like fly ash, other consumables, stock registration, sales registration, etc.
7. Aggrieved by the order of the Ld. CIT(A), this appeal has been filed before us. A paper book containing various details was also submitted by the appellant claiming that all the details, as required, were submitted before the Ld. CIT (A) but the same was not considered by him, and if



given the opportunity, it could explain everything. The DR, on the other hand, relied on the orders of the AO and the Ld. CIT (A).

8. We have considered the rival submissions and also the documents submitted in the paper book and after considering the request of the appellant, we find it proper to restore the matter back to the file of the Ld. CIT (A) to consider the details filed by the appellant and decide the issue accordingly after providing adequate opportunity of being heard to the assessee.

9. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 28.08.2024.

Sd/-
NARENDRA KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 28.08.2024.

Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.